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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON
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8 SIDNEY D. JENKINS, III,

9 Plaintiff,

10 vs.

11 ELDON VAIL, *et al.*,

12 Defendants.

NO. CV-08-5075-CI

**ORDER DENYING RENEWED
MOTION FOR TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

13 Magistrate Judge Imbrogno filed a Report and Recommendation on July 22,
14 2009, which recommends the court grant Plaintiff's Renewed Motion for Temporary
15 Restraining Order and Preliminary Injunction. (Ct. Rec. 82). The Defendants have
16 timely filed an objection to the same. (Ct. Rec. 91). The Plaintiff has responded to
17 the objection. (Ct. Rec. 93).

18 Plaintiff seeks injunctive relief to prevent future disciplinary action and the
19 withholding of privileges by Washington State Penitentiary (WSP) officials based on
20 his refusal to participate in work or educational programming. Plaintiff asserts his
21 sincerely held religious beliefs prevent him from supporting a non-Islamic
22 government. Magistrate Judge Imbrogno found this was a sincerely held religious
23 brief and, as such, sufficient to establish the requisite likely irreparable harm to
24 Plaintiff's rights under the First Amendment (free exercise of religion) and the
25 Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), 42 U.S.C.
26

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§§ 2000cc to 2000cc-5. Furthermore, Magistrate Judge Imbrogno found there was a serious question whether Department of Corrections (DOC) and WSP programming policies that burden Plaintiff's exercise of his religion serve a compelling government interest and if so, whether the least restrictive means are used to serve that interest. Finally, the Magistrate Judge found the balance of hardships tips in favor of the Plaintiff because there is no indication the infractions and loss of privileges could not resume, and because there is evidence the Plaintiff is being denied transfer reclassification unless he programs or prevails in the captioned matter. The Magistrate Judge found there was no evidence to establish a detriment to prison operations as a result of Plaintiff's refusal to program.

RLUIPA provides that:

No government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution . . . even if the burden results from a rule of general applicability, unless the government demonstrates that imposition of the burden on that person- (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that governmental interest.

42 U.S.C. §2000cc(a)(1).

RLUIPA defines "religious exercise" to include "any exercise of religion, whether or not compelled by, or central to, a system of religious belief. 42 U.S.C. § 2000cc-5(7)(A). It provides greater protection to inmates' free exercise rights than the First Amendment. Under traditional First Amendment jurisprudence, prisoners' free exercise claims are analyzed under the deferential rational basis standard of *Turner v. Safley*, 482 U.S. 78, 89-90, 107 S.Ct. 2254 (1987), whereas "RLUIPA requires the government to meet the much stricter burden of showing that the burden it imposes on religious exercise is in furtherance of a compelling governmental interest." *Greene v. Solano County Jail*, 513 F.3d 982, 986 (9th Cir. 2008).

1 Congress did not intend that RLUIPA would undermine prison operations.
2 Rather, “should inmate requests for religious accommodations become excessive,
3 impose unjustified burdens on other institutionalized persons, or jeopardize the
4 effective functioning of an institution, the facility would be free to resist the
5 imposition.” *Cutter v. Wilkinson*, 544 U.S. 709, 726, 125 S.Ct. 2113 (2005).
6 Congress intended for courts to give “due deference to the experience and expertise
7 of prison and jail administrators in establishing necessary regulations and procedures
8 to maintain good order, security and discipline, consistent with consideration of costs
9 and limited resources.” *Id.* at 723. The Supreme Court did “not read RLUIPA to
10 elevate accommodation of religious observances over an institution’s need to
11 maintain order and safety.” *Id.* at 722. Rather, “an accommodation must be measured
12 so that it does not override other significant interests.” *Id.*

13 “A plaintiff seeking a preliminary injunction must establish that he is likely to
14 succeed on the merits, that he is likely to suffer irreparable harm in the absence of
15 preliminary relief, that the balance of the equities tips in his favor, and that an
16 injunction is in the public interest.” *Winter v. Natural Resources Defense Council*,
17 ____ U.S. ____, 129 S.Ct. 365, 374 (2008). In *Winter*, the Supreme Court rejected
18 the Ninth Circuit’s standard that where a plaintiff demonstrates there is a strong
19 likelihood of prevailing on the merits, a preliminary injunction may be entered based
20 only on a “possibility” of irreparable harm. *Id.* at 375.

21 Here, it appears Magistrate Judge Imbrogno found more than just a mere
22 “possibility” of irreparable harm. She found a likelihood of irreparable harm, if not
23 the existence of irreparable harm already, by virtue of the Plaintiff having presented
24 a colorable First Amendment claim. Assuming that Plaintiff has a sincerely held
25 belief that performing work or engaging in educational programming for an “infidel”
26 government violates his Islamic faith, and therefore that the Plaintiff is subject to

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1 irreparable harm, this court nonetheless respectfully declines to follow the report and
2 recommendation and grant preliminary injunctive relief to the Plaintiff. Plaintiff's
3 likelihood of success on the merits is minimal, the balance of the equities (the
4 hardships) does not tip in his favor, and granting injunctive relief is not in the public
5 interest.

6 Inmates in state correctional institutions are expected to work and/or further
7 their educations. The Washington State Legislature intends the corrections system
8 to accomplish a number of different objectives, including reflecting the values of the
9 community such as avoiding idleness; adoption of the work ethic ("[i]t is the
10 community expectation that all individuals should work and through their efforts
11 benefit both themselves and the community"); providing opportunities for self-
12 improvement; linking the receipt or denial of privileges to responsible behavior and
13 accomplishments ("[t]he individual who works to improve himself or herself and the
14 community should be rewarded for these efforts [and] [a]s a corollary, there should
15 be no rewards for no effort"); and sharing in the obligations of the community ("[a]ll
16 citizens, the public and inmates alike, have a personal and fiscal obligation in the
17 corrections system"). RCW 72.09.010(5)(a)-(e). Another objective is that the
18 system should provide for prudent management of resources, recognizing that
19 "[s]ince most offenders return to the community, it is wise for the state and the
20 communities to make an investment in effective rehabilitation programs for offenders
21 and the wise use of resources." RCW 72.09.010(6).

22 RCW 72.09.070 creates a "correctional industries board of directors." Among
23 the duties of this board is to establish and implement policies for programs designed
24 to: (a) "[o]ffer inmates meaningful employment, work experience, and training in
25 vocations that are specifically designed to reduce recidivism and thereby enhance
26 public safety by providing opportunities for legitimate means of livelihood upon their

1 release from custody;” and (b) [provide industries which will reduce the tax burden
2 of corrections and save taxpayers money through production of goods and services
3 for sale and use.”

4 According to RCW 72.090.460:

5 The legislature intends that all inmates be required to
6 participate in department-approved education programs,
7 work programs, or both, unless exempted as specifically
8 provided in this section. Eligible inmates who refuse
to participate in available education or work programs
available at no charge to the inmates shall lose privileges
according to the system established under RCW 72.09.130.

9 RCW 72.09.130(1) requires DOC to “adopt, by rule, a system that clearly links
10 an inmate’s behavior and participation in available education and work programs with
11 the receipt or denial of earned early release days and other privileges.”

12 The foregoing legislative provisions make it clear that work and/or educational
13 programming are part and parcel of an inmate’s sentence of incarceration. A
14 compelling governmental interest is to maintain order, safety and discipline within
15 the penal institution. Requiring inmates to work and/or engage in education
16 programming maintains order, safety and discipline. Here, the Plaintiff does not seek
17 merely an “accommodation” of his religious beliefs. Instead, he seeks an outright
18 exemption from an obligation reasonably imposed on every inmate, regardless of
19 creed, who is imprisoned in the corrections system. Plaintiff does not seek an
20 accommodation allowing him to avoid work or educational programming on certain
21 dates and times so as to accommodate his religious beliefs. See *Snyder v. Trudell*,
22 2009 WL 37183 (E.D. Mich. 2009) (Seventh Day Adventist inmate refusing to work
23 from sundown Friday to sundown on Saturday); *Mayweathers v. Terhune*, 328
24 F.Supp.2d 1086, 1097 (E.D. Cal. 2004)(policy of disciplining Muslim prisoners for
25 missing work assignments in order to attend hour-long Friday Sabbath services was
26 not least restrictive means of furthering compelling governmental interest in keeping

1 prisoners occupied and using their labor for prison upkeep). Plaintiff seeks an
2 exemption allowing him to not engage in any work or educational programming at
3 all.

4 One of the keys to maintaining order and safety within a penal institution is to
5 avoid doing anything which appears to favor a particular group of inmates to the
6 exclusion of the other inmates, thereby breeding resentment among the excluded
7 inmates. This is very likely what would occur if all Muslim inmates were permitted
8 to opt out of work and educational programming on the basis that engaging in that
9 activity for the benefit of an “infidel” government is contrary to their religious
10 beliefs.¹ Allowing Muslim inmates to opt out of work or educational programming
11 on this basis would “impose unjustified burdens on other institutionalized persons.”

12 Here, there is no least restrictive means of furthering the government’s
13 compelling governmental interest in maintaining order, safety and discipline within
14 a penal institution. This is because, as noted, the Plaintiff is seeking more than just
15 an accommodation- a compromise- which allows him to adhere to his religious
16 beliefs, while at the same time preserving and promoting the government’s
17 compelling interest. The only option presented by Plaintiff is that he, and like-
18 minded Muslim inmates, be wholly excused from engaging in any work or

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24 ¹ The court is not suggesting that all Muslim inmates necessarily subscribe
25 to Plaintiff’s belief that engaging in work or educational programming is contrary
26 to Muslim beliefs.

1 educational programming.² The least restrictive means of furthering the
2 government's compelling interest is to require the Plaintiff to engage in work or
3 educational programming and if he does not do so, sanction him appropriately and as
4 authorized.³

5 It is in the public interest that all inmates work and/or engage in educational
6 programming. Engaging in work and/or educational programming increases the
7 likelihood that inmates will not re-offend and that they will become productive
8 citizens when they are released from incarceration. The financial burden on taxpayers
9 is reduced if inmates produce goods and services while incarcerated, and also if they
10 are not re-incarcerated at a later date.⁴ Accordingly, entering an injunction in favor
11 of the Plaintiff is not in the public interest. Because of the public interest, the court
12 cannot find that the balance of the equities tips in favor of the Plaintiff.

13 Assuming there is a "substantial burden" upon Plaintiff's "religious exercise,"
14 there is reason to believe the Defendants can demonstrate this burden is in furtherance
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16 ² If Muslim inmates are allowed to opt out of work and educational
17 programming on the basis that they cannot "program" for an "infidel" government,
18 it is reasonably foreseeable that inmates of other creeds would seek to opt out on
19 the same basis.

20 ³ Failure to program is considered a serious infraction, Washington
21 Administrative Code (WAC) 137-25-030 (557), and is subject to the sanctions
22 specified in WAC 137-28-350(p)

23 ⁴ Plaintiff indicates he is serving a sentence of life imprisonment without
24 parole. As discussed herein, there is still a compelling governmental interest in
25 having prisoners work and/or educationally program which is related to
26 maintaining order and security within the institution (i.e., avoiding idleness,
27 keeping prisoners occupied, having prisoners contribute to prison upkeep),
28 separate and distinct from a prisoner's prospects outside of the institution if and
when he is released.

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1 of a compelling governmental interest and that it is the least restrictive means of
2 furthering that interest. Accordingly, the court finds it is not likely that Plaintiff will
3 succeed on the merits of his claims (First Amendment and RLUIPA), that it is not in
4 the public interest to enter a preliminary injunction, and that the balance of hardships
5 does not tip in favor of the Plaintiff.⁵

6 The court **DECLINES** to adopt the Magistrate Judge's Report and
7 Recommendation (Ct. Rec. 82). Plaintiff's Renewed Motion for Temporary
8 Restraining Order and Preliminary Injunction (Ct. Rec. 58) is **DENIED**.

9 **IT IS SO ORDERED.** The District Court Executive is directed to enter
10 this order and to provide copies to Plaintiff, to counsel for Defendants, and to
11 Magistrate Judge Imbrogno.

12 **DATED** this 31st day of August, 2009.

13 *s/Lonny R. Suko*

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15 LONNY R. SUKO
16 Chief United States District Judge
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23 ⁵ Granting or denying a preliminary injunction is not a decision on the
24 merits. The Plaintiff has filed a motion for summary judgment (Ct. Rec. 85) which
25 goes to the merits of his claims and which will be heard by the Magistrate Judge at
26 a later date. Plaintiff is advised that an order denying a preliminary injunction is
appealable to the Ninth Circuit Court of Appeals pursuant to 28 U.S.C.
§1292(a)(1).